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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,764	09/01/2000	Sudhindra P. Herle	SAMS01-00090	6143

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EXAMINER
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SIMITOSKI, MICHAEL J

ART UNIT	PAPER NUMBER
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2134

DATE MAILED: 07/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/653,764

Applicant(s)

HERLE, SUDHINDRA P.

Examiner

Michael J. Simitoski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The response of 4/25/2005 was received and considered.
2. Claims 1-24 are pending.

### *Response to Arguments*

3. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.
4. Applicant's response (p. 11, ¶3 – p. 15, ¶1) states that the Internet server in Hsu has no knowledge of the IS-683A protocol and that one of ordinary skill in the art would not have been motivated to invert the protocol layers of Hsu. Upon reconsideration, Applicant's arguments are persuasive. However, an updated search has revealed the following new references to Bao, Gellens and Raith, submitted for consideration.

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3-9, 11-17 & 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over “Performance evaluation of TCP/RLP protocol stack over CDMA wireless link” by **Bao** in view of “Wireless Device Configuration (OTASP/OTAPA) via ACAP” by **Gellens** in further view of U.S. Patent 5,241,598 to **Raith**.

Regarding claims 1, 8-9, 16-17 & 24, Bao discloses a mobile station capable of communicating with a base station in a wireless network (Fig. 2) and receiving traffic (Fig. 2), said mobile station comprising an RF transceiver capable of receiving wireless messages/RLP over CDMA from said base station (Fig. 2) and converting said received wireless messages/RLP over CDMA to a plurality of internet protocol (IP) packets/TCP/IP packets (Figs. 1 & 2). Bao lacks a plurality of base stations, receiving at least one of a software program, a software correction patch and provisioning data from a server associated with said wireless network, an encryption controller capable of converting said IP packets from an encrypted format to a decrypted format and a data burst message protocol controller capable of converting said decrypted IP packets to at least one data burst message. However, Gellens receiving provisioning data from a provisioning/OTAF server associated with said wireless network (§8.1, Fig. 8) and a data burst message protocol controller capable of converting IP packets to at least one data burst message/IS-683A message (IS-683A over TCP/IP) (p. 28, §8.1 - §8.1.1) to reduce duplicate software in the mobile station (§8.1.1, #1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to receive provisioning data from a server and to include a data burst message controller to convert IP packets to at least one data burst message. One of ordinary skill in the art would have been motivated to perform such a modification to reduce duplicate software in the mobile station, as taught by Gellens (p. 28). Further, Gellens teaches that a mobile station should support end-to-end encryption (p. 9, §4.1) to gain security against attacks from within a carrier's network (p. 11, ¶1 & p. 29, #4). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include an encryption controller capable of converting said IP packets

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from an encrypted format to a decrypted format. One of ordinary skill in the art would have been motivated to perform such a modification to protect against attacks from within the carrier's network, as taught by Gellens (p. 9, §4.1, p. 11, ¶1 & p. 29, #4). Further, Raith teaches that it is well known in the art of cellular radio communications to incorporate multiple cells, each with their own base station, where a mobile station can communicate with a plurality of base stations to enable a mobile station to communicate from multiple cells (col. 9, lines 37-62 & col. 10, lines 1-28). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Bao to enable to mobile station to communicate with a plurality of base stations. One of ordinary skill in the art would have been motivated to perform such a modification to enable the mobile station to communicate from multiple cells, as taught by Raith (col. 9, lines 37-62 & col. 10, lines 1-28).

Regarding claims 3-7, 11-15 & 19-23, Bao, as modified above, lacks specific structures of the IP packets disclosed in Fig. 1 & Fig. 2. However, it is inherent that the IP datagram will contain IP layer information and an IP packet payload and the IP packet payload comprises TCP layer information. Further, by the combination of Gellens with Bao, (Gellens, p. 28, IS-683A over TCP/IP), the IP packet payload comprises over-the-air service provisioning payload/OTAF associated with said at least one data burst message/IS-683A message.

7. Claims 2, 10 & 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bao, Gellens & Raith**, as applied to claims 1, 9 & 17 above, in further view of U.S. Patent 6,609,148 to Salo et al. (**Salo**). Bao, as modified above, lacks explicit disclosure of IP sec, SSH, SSL or PPTP. However, Salo teaches that the IP Sec standard is known in the art and can provide

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encryption at the packet-processing layer (col. 13 lines 14-20). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to encrypt and decrypt packets according to the IP Sec tunneling protocol. One of ordinary skill in the art would have been motivated to perform such a modification as it was known in the art to provide packet encryption, as taught by Salo (col. 13 lines 14-20).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. "IP Datagram Encapsulation" is cited for teaching that upper layer information is included in the IP packet/datagram, included TCP layer information and application data (in this case, IS-683A data burst messages) (see Fig. 85).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Simitoski whose telephone number is (571) 272-3841. The examiner can normally be reached on Monday - Thursday, 6:45 a.m. - 4:15 p.m.. The examiner can also be reached on alternate Fridays from 6:45 a.m. – 3:15 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse can be reached at (571) 272-3838.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, DC 20231

**Or faxed to:**

(703)746-7239 (for formal communications intended for entry)

**Or:**

(571)273-3841 (Examiner's fax, for informal or draft communications, please label "PROPOSED" or "DRAFT")


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MJS  
June 22, 2005



GREGORY MORSE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100